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**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**FILED**

**SEP 14 2016**

**Federal Maritime Commission  
Office of the Secretary**

**DOCKET NO. 15-11**

**IGOR OVCHINNIKOV, ET AL**

**v.**

**MICHAEL HITRINOV ET AL**

**Consolidated With  
DOCKET NO. 1953(I)**

**KAIRAT NURGAZINOV, ET AL**

**v.**

**MICHAEL HITRINOV ET AL**

**RESPONSE OF RESPONDENTS' COUNSEL TO COMPLAINANTS'  
UNSUPPORTED CROSS-MOTION FOR AN ORDER TO SHOW CAUSE**

Pursuant to Rules 69 and 71, Respondents' Counsel hereby responds to Complainants' Unsupported Cross-Motion for an Order to Show Cause.

Complainants seek an Order to Show Cause why the undersigned should not be subject to ethical discipline. By their own admission, however, Complainants' Counsel violated Rule 502.6(a) when they signed that Cross-Motion because they expressly stated therein that they have no good faith belief that the FMC has authority to discipline attorneys. In their view, Rule

26 is simply wishful thinking, akin to a town hall moderator asking the candidates to play nice. Our view, however, is that the FMC Rules are not nearly so toothless. Although entry into the club of qualified attorneys may require only good standing in one state out of 50, remaining a member requires compliance with Rule 26 – including compliance with the Model Rules of Professional Conduct and the FMC’s own Rules.

There are obvious and substantial differences between the Motion filed by the undersigned and Complainants’ Cross-Motion, even apart from the tone of hysteria suffusing Complainants’ pleading. The undersigned’s Motion cites specific sections of the Model Rules and the FMC Rules and shows precisely how they have been violated by Complainants’ Counsel. The Cross-Motion, by contrast, cites not a single provision of either the Model Rules or the FMC Rules, and says not one word about how the undersigned allegedly violated any such Rule. Instead, Complainants (by their Counsel) simply rehearse their shopworn litany of largely imaginary grievances, all of which the Presiding Officer has heard repeatedly before. As shown below, Complainants’ unsubstantiated ravings do not make out any violation.<sup>1</sup>

The main charge asserted by Complainants is that the undersigned may have forged the signature of one of his clients – Mr. Hitrinov – on Mr. Hitrinov’s Affirmation. As we have already explained more than once, however, Mr. Hitrinov signed the Affirmation using a

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<sup>1</sup> Although Complainants have interwoven their attack with their defense, the undersigned restricts his response to what seems to be charges against him and not just attempted excuses by reason of “he did it too.” As the one, entirely procedural, exception, I clarify for Complainants what it means for a ruling to be “final.” Contrary to Complainants’ apparent misunderstanding, a ruling on the cross-motions and, if granted on the resulting Order to Show Cause, would have absolutely no direct impact on resolution of the Complaints. Both sides would be free to go on with their claims and defenses as before, albeit perhaps with new counsel. What “final” means in this context is that any ruling by the Presiding Officer resolving the ancillary matter of disciplinary action against either side would be final for purposes of Commission review *of that ruling*, apart from the main proceeding.

touchscreen application, has since submitted a pen and ink signed signature page, and stands ready to sign it yet again, if need be, in front of the Presiding Officer and Complainants' Counsel. And should the Presiding Officer deem it useful, the undersigned would be happy to submit in electronic form – in camera because it is plainly attorney-client privileged – the very email by which Mr. Hitrinov transmitted the touchscreen signature to the undersigned. Mr. Nussbaum's purported expert's report does not say anything about signature by touchscreen application, and so is entirely irrelevant, even apart from being inadmissible for Mr. Nussbaum's failure to follow the FMC Rules regarding expert reports.

Mr. Nussbaum's fantastical imaginings about the undersigned having authored any of Mr. Kapustin's pleadings are just that – entirely the product of his fevered imagination. Mr. Nussbaum does not, and cannot, produce even an iota of evidence to support his fanciful claim. And even if the undersigned had played any role in those pleadings, which I did not, Mr. Nussbaum fails even to suggest, much less demonstrate, how that would violate any rule.

Mr. Nussbaum's vague charge that I somehow “support” Mr. Kapustin is equally without merit. Indeed, it was Respondents that first pointed out Judge Hillman's statement regarding Mr. Kapustin,<sup>2</sup> which Mr. Nussbaum now trumpets *ad nauseum*, and which statement was made at a time when Mr. Nussbaum was still defending him. Mr. Kapustin has filed an Affirmation and we have sometimes cited it, for whatever the finder of fact thinks it is worth.<sup>3</sup> It is worth recalling, however, that: (i) it was Mr. Nussbaum who was counsel for Mr. Kapustin during the several years when the various frauds cited by Judge Hillman took place, (ii) Mr. Nussbaum who

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<sup>2</sup> See Respondents' April 14, 2016 Motion for Stay at page 5, nn.8&9 and Attachment 11.

<sup>3</sup> Many of our citations to the Kapustin Affirmation are to documents, not statements, including emails/letters sent by Mr. Nussbaum himself. Complainants' purported challenges to the text of Mr. Kapustin's Affirmation have no bearing on the import of this irrefutable documentary evidence.

volunteered to continue representing Mr. Kapustin for free, (iii) Mr. Nussbaum who put forth Mr. Kapustin as a reliable witness, and (iv) Mr. Nussbaum who quite recently told third parties that he was bringing information to the Presiding Officer at the request of Mr. Kapustin. Kapustin Aff. App. 16 (email from Mr. Nussbaum to third parties).

Little needs to be said about Mr. Nussbaum's totally illogical and insupportable rant regarding the fabricated invoices he has repeatedly utilized (and allegedly helped create). He apparently claims that Empire falsified these invoices before sending them to Global, and then Global un-falsified them. Apart from the obvious gap in logic, this argument depends entirely on Mr. Nussbaum's false assertion that nobody has ever certified that the unadorned invoices produced by Respondents as part of its "shipping documents" were in the same form in which they were sent to Global. That is simply untrue. Mr. Hitrinov has expressly certified that the invoices submitted by Respondents are in "the precise form in which the invoices left EUL." Hitrinov Aff. para. 35. Because Mr. Nussbaum's predicate falls flat, his conclusion does as well.

Perhaps Mr. Nussbaum is claiming that the invoices were falsified for this proceeding. This again, is contrary to the certification of Mr. Hitrinov, and in any event makes no sense. Toward what end would Respondents take such action? Both sets of invoices show the same amounts for the same transactions, so there would be no benefit to Respondents from creating fakes.<sup>4</sup> More importantly, Mr. Nussbaum overlooks that these same invoices were submitted long ago in the EDNY, and that the template for falsification was there discovered on the computer of Mr. Nussbaum's employer at the time. Finally, as stated in our June 22 Motion to Strike, Mr. Nussbaum could clear up this matter simply by producing the native originals

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<sup>4</sup> It is our understanding that the invoices were fabricated to make them look more official for use by Global's customers, but only Mr. Kapustin and Mr. Nussbaum know for sure.

including the emails by which they were sent. His repeated rejection of that option belies his claims loud and clear.

Mr. Nussbaum cavils about “innumerable” status reports allegedly filed by the undersigned without leave from the Presiding Officer. Of the four status reports (hardly innumerable) filed by Respondents over several months, not a single one contains even a scintilla of argument or any request for relief, making them entirely proper under the Rules, including as recently explicated by Judge Wirth.

Last, and definitely least, Mr. Nussbaum makes unfounded and unsupported allegations that I improperly used the passing of my father as an excuse for an otherwise unwarranted extension of time. Even apart from Mr. Nussbaum’s failure to provide one scrap of evidence for his imaginary complaint, the assertion wholly ignores the actual request for extension itself. In that motion, family obligations were only a small, but true, part of the reasons given. As there stated, the undersigned was on a combined business/family trip, followed by obligations to the DOJ on an unrelated matter. Here, to the extent permissible given confidentiality requirements, is my schedule:

- Wednesday, July 27 -- Meeting with Director and Deputy Director of FMC Bureau of Enforcement/travel to New Jersey/Client Meeting
- Thursday, July 28 -- Client Meetings/travel to New York for dinner meeting with client/travel back to New Jersey
- Friday, July 29 -- Travel to my parents’ home/visit with my step-mother to my father’s grave/review my father’s will (of which I am executor) and other matters regarding the estate with my step-mother
- Saturday, July 30 – Travel back to Washington, DC
- Sunday, July 31 – Meeting at NP office resulting from obligation to DOJ

- Monday, August 1 – Meeting at DOJ in Washington, D.C.
- Tuesday, August 2 – Meeting with DOJ in Baltimore, MD.

Although this schedule left little time for other work, I was able to spend some time on the reply due August 2, which helped get it ready for the extended August 9 due date, but not nearly enough for completion by the original deadline.

### CONCLUSION

For the reasons given above, the Presiding Officer should summarily deny Complainants' retributive motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Jeffrey", is written over a horizontal line.

Eric Jeffrey  
Nixon Peabody LLP  
799 9<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20001  
202-585-8000

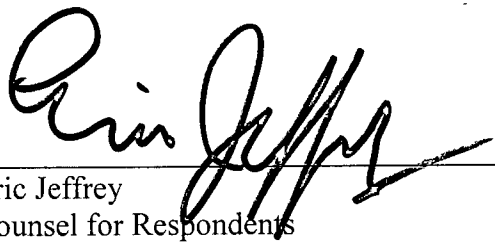
**CERTIFICATE OF SERVICE**

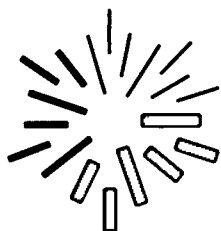
I hereby certify that I have this day served the foregoing Response of Respondents' Counsel to Complainants' Unsupported Cross-Motion For an Order to Show Cause by first class mail to the following:

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224

Date: September 14, 2016

  
Eric Jeffrey  
Counsel for Respondents



**NIXON  
PEABODY**

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FEDERAL MARITIME COMMISSION

NIXON PEABODY LLP  
ATTORNEYS AT LAW

NIXONPEABODY.COM  
@NIXONPEABODYLLP

Eric C Jeffrey  
Counsel  
ejeffrey@nixonpeabody.com

Nixon Peabody LLP  
799 9th Street NW  
Suite 500  
Washington, DC 20001-4501  
202-585-8000

September 14, 2016

**BY FIRST CLASS MAIL**

Ms. Rachel Dickon  
Assistant Secretary of Federal Maritime Commission  
800 North Capitol St.  
Room 1046  
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Dickon:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Response of Respondents' Counsel to Complainants' Unsupported Cross-Motion For an Order to Show Cause

If you have any questions, please do not hesitate to contact me.

Sincerely,

Eric C. Jeffrey

Enclosures